

STEPTOE & JOHNSON

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WASHINGTON, D. C. 20036

ROBERT J. CORBER

(202) 429-8198

1 6036  
RECORDATION NO. 8-322A030

NOV 17 1988 9 20 AM

INTERSTATE COMMERCE COMMISSION

NOV 17 1988 9 20 AM

INTERSTATE COMMERCE COMMISSION

November 17, 1988

1 6036

No.

8-322A030

NOV 17 1988

Ms. Noreta R. McGee

Secretary

Interstate Commerce Commission

Room 2215

Washington, D.C. 20423

RECORDATION NO. 8-322A030

Date

Fee \$ 39.00

ICC Washington, D. C.

NOV 17 1988 9 20 AM

INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. §11303 are the original and one copy of the documents hereinafter described. They relate to the railroad equipment identified below.

1. Lease Agreement dated as of June 13, 1986 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee.

2. Amendment No. 1 dated as of October 15, 1987 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee.

3. Equipment Schedule No. 3 dated as of October 11, 1988 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee.

The equipment subject to these documents consists of 440 covered hopper cars bearing the marks of KYLE as stated in the Equipment Schedule No. 3.

The names and addresses of the parties to the documents are as follows:

Lessor: Brae Transportation, Inc.  
One Hundred Sixty Spear St.  
San Francisco, CA 94105

Lessee: Kyle Railroad Company  
3rd & Railroad Avenue  
Phillipsburg, Kansas 67661

Please file and record the documents and index them under the names set forth above. Since the documents relate to

NOV 17 9 20 AM '88  
NOTICE OF FILING  
TO THE PUBLIC

*Handwritten signature: Noreta R. McGee*

Ms. Noreta McGee  
November 17, 1988  
Page 2

the same transaction, it is requested that all be assigned the same recordation number with consecutive letter designation for each document after the first listed above.

A fee of \$39.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the person presenting this letter.

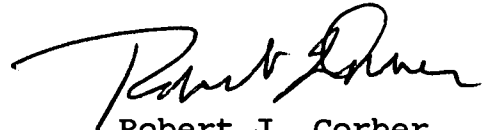
A short summary of each document to appear in the index follows:

1. Lease Agreement dated as of June 13, 1986 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee, covering covered hopper cars marked as shown in equipment schedule.

2. Amendment No. 1 dated as of October 15, 1987 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee, covering covered hopper cars marked as shown in equipment schedule.

3. Equipment Schedule No. 3, dated as of October 11, 1988 between Brae Transportation, Inc., lessor, and Kyle Railroad Company, lessee, covering covered hopper cars marked as shown in document.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert J. Corber", is written over the typed name.

Robert J. Corber  
Attorney for Brae  
Transportation, Inc.

Enclosures as stated

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RECORDATION NO. \_\_\_\_\_ FILED 1988

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INTERSTATE COMMERCE COMMISSION

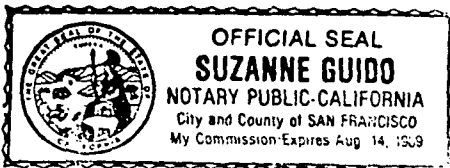
STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

)  
) ss.  
)

I, Suzanne Guido, a Notary Public in and for the State of California, duly commissioned and sworn, do certify that on this 21 day October, in the year 1988, I carefully compared the annexed copy of the lease agreement with the original thereof, and that the same is a full, true and correct copy of said original lease agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of San Francisco, the day and year in this certificate first above written.



Suzanne Guido  
Notary Public

[seal]

My commission expires: 8.14.89

## AMENDMENT NO. 1

Amendment No. 1 dated as of <sup>September 1</sup>~~October 15~~, 1987 between BRAE TRANSPORTATION, INC., 160 Spear Street, Suite 1600, San Francisco, California 94105 ("BRAE") and KYLE RAILROAD COMPANY, Third and Railroad Avenue, Phillipsburg, Kansas 67661 ("LESSEE")

### RECITALS

Pursuant to the Lease Agreement dated as of June 13, 1986 (the "Agreement"), BRAE is currently leasing 455 covered hopper cars (the "Cars") to LESSEE, as set forth in Equipment Schedule No. 2 attached hereto.

BRAE and LESSEE now desire to amend certain portions of the Agreement.

In consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

### AGREEMENTS

1. Defined Terms. The terms used in this Amendment No. 1 which are defined in the Agreement shall have the same meanings herein as specified therein, except when specifically redefined.

2. Equipment Schedule. The Agreement shall cover those railcars listed and identified in Equipment Schedule No. 2 attached hereto.

3. Amendment to Section 2 of the Agreement. Section 2 of the Agreement shall be deleted in its entirety and the following new sentence shall be substituted therefore:

"The lease pursuant to this Agreement with respect to each Car shall commence when such Car has been delivered, as provided in Section 3A hereof, and shall continue until August 31, 1992 (the "Lease Term")."

4. Amendment to Section 3D of the Agreement. The first sentence contained in Section 3D shall be deleted in its entirety and the following new sentence shall be substituted therefore:

"BRAE has at any time the right, upon 60 days written notice, to replace any or all of the Cars, including destroyed Cars, with new, used or rebuilt Cars of the same general class and type."

5. Amendment to Section 6A(iii) of the Agreement. Section 6A(iii) shall be deleted in its entirety and the following new section shall be substituted therefore:

"Utilization - the term "Utilization" shall mean, with respect to any period, a fraction, the numerator of which is (x) the total Payments earned during such period, and the denominator of which is (y) the aggregate number of Car Hours during such period multiplied by the then applicable hourly car hire rate, plus the aggregate number of Car Days (Car Hours divided by 24) during such period multiplied by the then applicable mileage rate, multiplied by the actual average miles travelled per day per Car during such period. The applicable hourly car hire and mileage rates shall be determined pursuant to the Hourly and Mileage Car Hire Rate Table."

6. Amendment to Section 6B of the Agreement. Section 6B shall be deleted in its entirety and the following new section shall be substituted therefore:

"B. LESSEE agrees to pay the following rent to BRAE for the use of the Cars:

- (i) If, in any calendar quarter, Utilization is 40% or less, BRAE shall be entitled to retain 100% of all Payments received from railroad companies other than LESSEE for such companies' use and handling of the Cars during such period.
- (ii) If, in any calendar quarter, Utilization is greater than 40%, BRAE shall be entitled to retain an amount equal to the Base Rental, plus an amount equal to 75% of all Payments received in excess of the Base Rental. LESSEE shall be entitled to 25% of all Payments received in excess of the Base Rental.
- (iii) All sums due LESSEE hereunder from BRAE shall be paid within 90 days after the end of the calendar quarter in which such sums are earned.
- (iv) Nothing contained in this Agreement shall prevent the parties from entering into seasonal loading agreements by LESSEE, BRAE and LESSEE's connecting carriers for purposes of keeping the Cars utilized. The terms and conditions of such agreements relating to the distribution of revenues resulting from the loading agreement shall supercede this Agreement only with respect to this Section 6B."

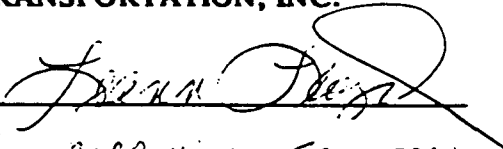
7. Amendment to Section 6E of the Agreement. The paragraph contained in Section 6E shall be deleted in its entirety and the following new paragraph shall be substituted therefore:

"If at any time the Utilization for the Cars during the preceeding four calendar quarters averaged less than 55%, BRAE may at its option and upon not less than ten (10) days prior written notice to LESSEE, terminate this Agreement as to such Cars as BRAE shall determine, provided, however, that BRAE shall be precluded from withdrawing any Cars from this Agreement pursuant to this Section 6D if, during such ten day notice period, LESSEE elects to pay to BRAE the difference between the amount of Payments BRAE received in such preceeding four calendar quarters and the amount of Payments BRAE would have received had Utilization equaled 55%, (the "Make-up Amount"), BRAE shall be precluded from withdrawing any Cars from this Agreement pursuant to this Section 6E. LESSEE may, at its option, pay to BRAE the Make-up Amount on all or a portion of the Cars BRAE intends to terminate pursuant to the Section 6E, in which case BRAE shall only have the right to withdraw those Cars for which the Make-up Amount has not been paid."

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 as of  
the 1st day of September, 1987.

**BRAE TRANSPORTATION, INC.**

By



Title

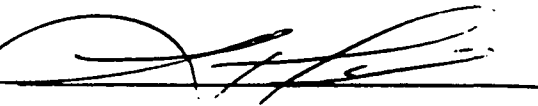
CORPORATE SECRETARY

Date

\_\_\_\_\_

**KYLE RAILROAD COMPANY**

By



Title

\_\_\_\_\_

Date

\_\_\_\_\_

BRAE Transportation, Inc. ("BRAE"), hereby leases the following railcars to Kyle Railroad Company ("LESSEE") pursuant to that certain Lease Agreement dated as of June 13, 1986, as amended (the "Agreement").

<u>Number of Cars</u>	<u>Description</u>	<u>A.A.R. Designation</u>
455	4600 to 4750 cu. ft. 100-ton capacity Covered Hopper Cars	LO
- 3		

Car Number(s)

KYLE 4105-4154, 4200	KYLE 7000, 7003, 7005-7007,
KYLE 16100-16499	7012-7013, 7017,
KYLE 102300-102424*	7021-7022, 7024,
KYLE 260125, 260127,	7027, 7029-7030,
260130, 260132-260133,	7034-7035, 7039-7042,
260136, 260138-260139,	7044, 7046, 7051,
260142, 260145,	7054-7056, 7061-7062,
260148-260149,	7067-7068, 7071,
260151-260152,	7073-7074, 7080, 7083,
260154, 260162,	7085, 7087-7088, 7092,
260168-260169,	7094-7095, 7097,
260171, 260173,	7106, 7111, 7114,
260177, 260179-260184,	7117-7118, 7120,
260186, 260189,	7123-7124, 7126-7127,
260191, 260195-260196,	7129, 7131, 7133,
260198-260200	7136, 7141-7142,
KYLE 260325-260390,	7145-7149, 7153,
260392, 260397, 260402,	7164-7165, 7170-7171,
260410-260424	7174, 7177, 7180,
	7183, 7186-7188,
	7190, 7195, 7197

\* Excluding KYLE 102378

BRAE and LESSEE hereby agree that this Equipment Schedule No. 2 shall supersede Equipment Schedule No. 1 and such Equipment Schedule No. 1 shall become null and void as of the date hereof.

BRAE and LESSEE hereby incorporate by reference all of the terms, conditions and provisions of the Agreement in this Schedule.

IN WITNESS WHEREOF, the parties have executed this Schedule as of the 1st day of September 1987.

BRAE TRANSPORTATION, INC.

By [Signature]

Title CORPORATE SECRETARY

Date \_\_\_\_\_

KYLE RAILROAD COMPANY

By [Signature]

Title \_\_\_\_\_

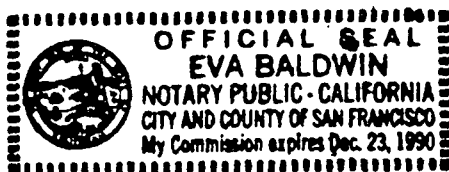
Date \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

)  
) SS  
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On this 18th day of December, 1987, before me personally appeared LYNN T. CECIL, to me personally known, who being by me duly sworn says that such person is Executive Vice-President of KYLE RAILROAD COMPANY, and that the foregoing Amendment No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

[seal]



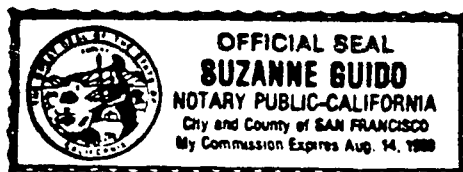
Eva Baldwin  
Notary Public

STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO

)  
) SS  
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On this 1st day of September, 1987, before me personally appeared Leann Lloyd, to me personally known, who being by me duly sworn says that such person is Corp. Secretary of BRAE TRANSPORTATION, INC., and that the foregoing Amendment No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

[seal]



Suzanne Guido  
Notary Public